

1 John A. Anthony (FL SBN 0731013)  
2 janthony@anthonyandpartners.com  
3 Andrew J. Ghekas (FL SBN 0119169)  
4 aghekas@anthonyandpartners.com  
5 *Both Appearing Pro Hac Vice*  
6 100 S. Ashley Drive, Suite 1600  
7 Tampa, FL 33602  
8 Telephone: (813) 273-5616  
9 Facsimile: (813) 221-4113

6 Peter C. Califano (SBN 129043)  
7 pcalifano@nvlawllp.com  
8 John A. Kelley (SBN 194073)  
9 jkelley@nvlawllp.com  
10 NIESAR & VESTAL LLP  
11 90 New Montgomery St. 9<sup>th</sup> Floor  
12 San Francisco, CA 94105  
13 Telephone: (415) 882-5300  
14 Facsimile: (415) 882-5400

11 Attorneys for Plaintiff CENTENNIAL BANK

13 UNITED STATES BANKRUPTCY COURT

14 NORTHERN DISTRICT OF CALIFORNIA

15 [San Jose Division]

17 In re  
18 EVANDER FRANK KANE,  
19 Debtor.

Case No: 21-50028 SLJ

Chapter 7

22 CENTENNIAL BANK, an Arkansas state  
23 chartered bank,

24 Plaintiff,

25 vs.

26 EVANDER FRANK KANE,

27 Defendant.

Adv. No. 21-05016

**PLAINTIFF CENTENNIAL BANK'S EX  
PARTE APPLICATION TO: (A)  
SPECIALLY SET HEARING ON  
MOTION FOR SUMMARY JUDGMENT  
AND (B) TO EXCEED THE PAGE  
LIMITATION FOR ITS OPENING  
PAPERS**

**[NO HEARING REQUESTED]**

1 **EX PARTE APPLICATION**

2  
3 Plaintiff CENTENNIAL BANK (“Centennial”), by and through its attorneys, pursuant to  
4 Judge Johnson’s Open Calendar Procedure ([https://www.canb.uscourts.gov/procedure/san-](https://www.canb.uscourts.gov/procedure/sanjose/johnson/judge-johnsons-open-calendar-procedure-0)  
5 [jose/johnson/judge-johnsons-open-calendar-procedure-0](https://www.canb.uscourts.gov/procedure/sanjose/johnson/judge-johnsons-open-calendar-procedure-0)) (the “Procedures”) and Bankruptcy  
6 Local Rule 9013-1(c) for the United States Bankruptcy Court for the Northern District of  
7 California, requests a specially set hearing date of Thursday, December 15, 2022 on its motion for  
8 summary judgment and permission to file an initial memorandum of points and authorities not to  
9 exceed 31 pages of text, based on the following:

10 1. On or about February 22, 2022 the Court issued a Trial Scheduling Order in this  
11 adversary proceeding [Adv. Doc. No. 33] stating that the “Last day to hear Summary Judgment  
12 Motion(s) is December 15, 2022”. Scheduling Order, p. 2. Centennial has relied on this date in  
13 planning and preparing a motion for summary judgment in this adversary on two of its four  
14 Objections to Discharge (Count III -- Section 727(a)(3) [No Records] and Count V -- Section  
15 727(a)(5) [Unexplained Loss of Assets].

16 2. When Centennial recently reviewed the Court’s 2022 Open Calendar Dates For the  
17 Honorable Stephen L. Johnson it was discovered that the Court had no open dates available in  
18 December on any adversary cases (all chapters). The Procedures direct parties to contact  
19 Chambers via the Courtroom Deputy to schedule a date for hearing that is not available on the  
20 regular Open Calendar system. Therefore, Centennial requests a hearing date of December 15,  
21 2022 on its motion for summary judgment, or if the Court is not available, another alternative  
22 date, that would allow Centennial to comply with the 28-day notice and service requirement for  
23 opening motion papers pursuant to BLR 7007-1. If the hearing date on Centennial’s motion was  
24 specially scheduled as requested, Centennial’s opening papers would need to be filed and served  
25 by November 17, 2022.

26 3. In addition, BLR 9013-1(c) requires that Centennial’s initial memorandum of  
27 points and authorities not exceed 25 pages of text. Currently Centennial’s draft of its MPA is 31  
28

1 pages of text. This is primarily due to the complexity of pursuing two separate Section 727  
2 claims in the Bank's motion for summary judgment, along with the fact that there are over 100  
3 references to supporting evidence listed in the MPA.

4 4. A modest increase to 31 pages of text to Centennial's initial memorandum of  
5 points and authorities is all that is needed to properly set forth Centennial's position on these two  
6 Section 727 claims and supporting evidence. Furthermore, since this request only covers the  
7 Centennial's opening motion papers and Defendant Evander Kane has yet to file an opposition,  
8 there is no prejudice to the Defendant in granting this request.

9 5. In the afternoon of November 8, 2022, the undersigned spoke with Stephen D.  
10 Finestone, Esquire of the law firm of Finestone Hays LLP, counsel of record for Kane, about this  
11 ex parte application. Mr. Finestone told me that although he has not yet conferred with his client,  
12 he does not oppose the specially set December 15, 2022 hearing date on Centennial's motion for  
13 summary judgment and furthermore does not object to the increased 31-page limit to Centennial's  
14 opening MPA.

15 WHEREFORE, Centennial requests an order specially setting December 15, 2022 for the  
16 hearing on Centennial's motion for summary judgment, and for permission to file an initial  
17 memorandum of points and authorities in the matter, not to exceed 31 pages of text.

18  
19 DATED: November 9, 2022

NIESAR & VESTAL LLP

20  
21 By: /s/ Peter C. Califano  
22 Peter C. Califano, Esq.  
23 Attorneys for Plaintiff CENTENNIAL BANK,  
24 an Arkansas state chartered bank  
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